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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/894,052	06/28/2001	Leif Wilhelmsson	34650-00675USPT	5411

7590 06/06/2005
JENKENS & GILCHRIST
3200 Fountain Place
1445 Ross Avenue
Dallas, TX 75202-2799

EXAMINER

DEANE JR, WILLIAM J

ART UNIT	PAPER NUMBER
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2642

DATE MAILED: 06/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/894,052

Applicant(s)

WILHELMSSON ET AL.

Examiner

William J. Deane

Art Unit

2642

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 24 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-66 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-66 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 – 17, 19 – 21, 23 – 28, 30 – 32, 34 – 39, 41 – 43, 45 – 50, 52 – 54, 56 – 61, 63 – 65 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,548,836 (Taromaru).

With respect to claims 1 – 66, note Col. 5, line 55 – Col. 6 line 17, Col. 7, lines 50 – 64, Col. 8, lines 60 – 67 and Col. 11, line 23 – Col. 13, line 6. In addition, note the Figs. and Abstract.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 18, 22, 29, 33, 40, 44, 51, 55, 62 and 65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taromaru in view of U.S. Patent Application No. 2002/0044073 (Ungerboeck et al.).

Note that Ungerboeck et al. use an SNR having coding and modulation scheme paragraph 0004. It would have been obvious to one of ordinary skill to have an SNR to

accomplish a given rate with a coding and modulation scheme, as this is the way things are done. If this is not agreed, it would have been obvious to one of ordinary skill in the art to have incorporated the SNR of Ungerboeck et al. into the Taromaru device as such would only entail the substitution of one SNR for another.

Response to Arguments

Applicant's arguments filed 02/24/2005 have been fully considered but are not deemed persuasive to any error in the above rejection.

Applicant makes two major arguments. First, that Taromaru fails to teach determining a rate of change of strength values of a received signal. However, note that Taromaru teaches the use of "Fading" (see Col. 3, lines 50 – 65). Fading is a rate of change of strength values.

Second, applicant argues that the threshold is a function of modulation and coding. See Ungerboeck et al. above.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

U.S. Patent No. 6,816,731 (Maruyama) – note Figs. and Abstract;

U.S. Patent No. 5,991,613 (Euscher et al.) – note Figs. and Abstract;

U.S. Patent No. 5,603,107 (Gottfried et al.) – note Figs., Abstract and Summary of the Invention;

U.S. Patent No. 5,758,271 (Rich et al.) – note Figs. and Abstract;

5,379,449 (Porambo) – note Abstract;

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5,241,693 (Kim et al.) – note Abstract;


U.S. Patent Application No. 2005/0073944 (Rudkin) – note Summary of the
Invention;

U.S. Patent Application No. 2002/0018527 (Vanderaar et al.) – note paragraph
0031; and

EP 1 148 639 (Lichterfeld) – note Abstract.

Any inquiry concerning this communication or earlier communications from the
examiner should be directed to Bill Deane whose telephone number is (571) 272-7484.
In addition, facsimile transmissions should be directed to Bill Deane at facsimile number
(703) 872-9306.

30May05


WILLIAM J. DEANE, JR.
PRIMARY EXAMINER